

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HENRY FROMETA GOZALEZ,

Plaintiff,

vs.

JAMES GREG COX, *et al.*,

Defendants.

2:13-cv-00157-APG-NJK

**ORDER**

Henry Frometa Gozalez, an individual incarcerated at the High Desert State Prison, has submitted a *pro se* Civil Rights Complaint (received January 30, 2013), but has not paid the required filing fee of \$350 or filed a complete application to proceed in *forma pauperis*. It appears from the documents plaintiff has provided that he has attempted to obtain a financial certificate, but that none was provided by the prison administration. However, without that certificate, signed by an authorized prison official, the application to proceed in *forma pauperis* cannot be granted. 28 U.S.C. § 1915(a); LSR 1-2. Moreover, plaintiff has not provided the financial certificate during the time the matter has been pending. The matter is subject to dismissal on that basis.

Also of note is the nature of plaintiff's claims, which argue that he is being held in prison beyond the date that his sentence should have expired in violation of the Eighth Amendment. If plaintiff's section 1983 claims necessarily implicate the validity of his continuing confinement, the claims do not accrue unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of habeas corpus. *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir.

1 1997)(citing *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)). The United States Supreme Court has  
2 held that a prisoner in state custody cannot use a § 1983 action to challenge “the fact or duration of  
3 his confinement.” *Wilkinson v. Dotson*, 544 U.S. 74, 78, 125 S.Ct. 1242 (2005) quoting *Preiser v.*  
4 *Rodriguez*, 411 U.S. 475, 489, 93 S.Ct. 1827 (1973). He must seek federal habeas corpus relief (or  
5 appropriate state relief) instead.

6 This matter shall be dismissed without prejudice. Plaintiff is advised to bring this claim as a  
7 petition for writ of habeas corpus, which should be brought in the first instance to the state court  
8 where he was convicted. *See* 28 U.S.C. § 2254(b)(1).

9 Accordingly, this action is **DISMISSED**, without prejudice. The Clerk shall enter judgment  
10 accordingly.

11 **IT IS SO ORDERED.**

12 Dated this 30<sup>th</sup> day of April, 2013.

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UNITED STATES DISTRICT JUDGE